

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ROBERT VAUGHN BRUCE,

Plaintiff,

v.

3:06-cv-33

CORRECTIONAL MEDICAL SERVICES, INC.,

Defendant.

MEMORANDUM AND ORDER

This is a *pro se* prisoner's civil rights action pursuant to 42 U.S.C. § 1983. The matter is scheduled for a jury trial on May 24, 2007, and is before the court on various motions filed by the parties.

Plaintiff filed an interlocutory appeal of the court's order setting aside the entry of default against the defendant. Plaintiff has now filed an application to proceed *in forma pauperis* on appeal and a certified copy of his inmate trust account for the previous six-month period. It appears from the application that the plaintiff lacks sufficient financial resources to pay the \$455.00 filing fee. Accordingly, pursuant to 28 U.S.C. § 1915(b), plaintiff will be allowed to proceed on appeal without the prepayment of costs or fees or security therefor.

Plaintiff is herewith assessed the \$455.00 fee for filing an appeal. Pursuant to 28 U.S.C. § 1915(b)(1)(A) and (B), the custodian of the plaintiff's inmate trust account at the institution where he now resides is directed to submit to the Clerk, U.S. District Court, 800 Market Street, Suite 130, Knoxville, Tennessee 37902, as an initial partial payment, whichever is greater of:

(a) twenty percent (20%) of the average monthly deposits to the plaintiff's inmate trust account; *or*

(b) twenty percent (20%) of the average monthly balance in the plaintiff's inmate trust account for the six-month period preceding the filing of the interlocutory appeal on February 1, 2007.

Thereafter, the custodian shall submit twenty percent (20%) of the plaintiff's preceding monthly income (or income credited to the plaintiff's trust account for the preceding month), but only when such monthly income exceeds ten dollars (\$10.00), until the full filing fee of Four Hundred Fifty-five Dollars (\$455.00) has been paid to the Clerk. 28 U.S.C. § 1915(b)(2).

The Clerk is **DIRECTED** to send a copy of this Memorandum and Order to the Warden of the Brushy Mountain Correctional Complex, the Commissioner of the Tennessee Department of Correction, and the Attorney General for the State of Tennessee to ensure that the custodian of the plaintiff's inmate trust account complies with that portion of the Prison Litigation Reform Act relating to payment of the filing fee. The Clerk is further **DIRECTED** to forward a copy of this Order to the court's financial deputy.

The defendant has filed a motion to dismiss for lack of prosecution and failure to comply with court order, based upon plaintiff's failure to file his pretrial narrative statement as required by the Scheduling Order. In response, plaintiff moves for an extension of time to file his pretrial narrative statement. In support of his motion, plaintiff states that he assumed the Scheduling Order would be delayed until the interlocutory appeal is resolved. Under the circumstances, the trial date of May 24, 2007, is **CANCELLED**. The defendant's motion to dismiss [Court File No. 21] is **DENIED**. Plaintiff's motion for extension of time [Court File No. 25] is **GRANTED**. The court will reschedule the trial of this matter, and set appropriate deadlines, after the interlocutory appeal is concluded.

Plaintiff has filed a motion for appointment of counsel. The appointment of counsel in a civil case is a matter within the discretion of the court. *Childs v. Pellegrin*, 822 F.2d 1382, 1384 (6th Cir. 1987). After careful consideration of plaintiff's motion, including the type and nature of the case, its complexity, and the plaintiff's ability to prosecute his claim, this court is of the opinion that counsel is not necessary at this time to insure that plaintiff's claims are fairly heard. *See Knop v. Johnson*, 977 F.2d 996 (6th Cir. 1992); *Mira v. Marshall*, 806 F.2d 636 (6th Cir. 1986). Plaintiff's motion for appointment of counsel [Court File No. 24] is **DENIED**.

E N T E R:

s/ Leon Jordan
United States District Judge